

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil Action No. \_\_\_\_\_

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

**COMPLAINT**

DMH PARTNERS NORTH, LLC, )

a Minnesota limited liability company; )

PATRICK T. CHRISTIANSEN; )

MICHAEL J. CHRISTIANSEN; )

and DONALD HUBER, )

Defendants. )

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Secretary of the Army acting through the United States Army Corps of Engineers (Corps), alleges as follows:

**NATURE OF THE ACTION**

1. This is an environmental enforcement action under the Clean Water Act, 33 U.S.C. §§ 1251-1387 (CWA). The above-named Defendants discharged pollutants into waters of the United States in Sauk Rapids, Minnesota without complying with the terms and conditions of a permit, issued by the Corps under 33 U.S.C. § 1344, authorizing their discharge of dredge and fill material. In addition, the Defendants did not comply with a Corps administrative order under CWA section 404. Accordingly, Defendants violated both sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

2. By this action, the United States seeks to require Defendants to: (1) provide the compensatory mitigation required under the permit to offset the unavoidable impacts to waters of the United States; and (2) pay civil penalties, all pursuant to the CWA, 33 U.S.C. § 1344(s).

### **AUTHORITY AND NOTICE**

3. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519.

4. Notice of this action has been given to the State of Minnesota pursuant to the CWA, 33 U.S.C. § 1344(s).

### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over the subject matter of this action pursuant to 33 U.S.C. §§ 1319 and 1344(s) and 28 U.S.C. §§ 1331, 1345, and 1355.

6. The Court has personal jurisdiction over Defendants because they reside in and/or conduct business in Minnesota.

7. Venue is proper in the District of Minnesota pursuant to 33 U.S.C. § 1344(s), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because the Defendants reside in and/or conduct business in this District, the subject property is located in this District, and the violations alleged herein occurred in this District.

### **THE PARTIES**

8. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C.

§§ 516 and 519.

9. Defendant DMH Partners North, LLC, is a Minnesota limited liability company. It was organized in 2004 and administratively terminated in 2006 by the Minnesota Secretary of State. Its location and mailing address, according to its Articles of Organization, is 801 Twelve Oaks Center Drive, Suite 836, Wayzata, MN 55391.

10. Defendant Patrick T. Christiansen is an individual residing in Florida. At all times relevant to this action, Defendant Patrick T. Christiansen was a member and governor of DMH Partners North, LLC, and conducted business in Minnesota. The United States brings this action against Patrick T. Christiansen in his individual capacity and as an officer, member, governor, employee, and/or agent of DMH Partners North, LLC.

11. Defendant Michael J. Christiansen is an individual residing in Minnesota. At all times relevant to this action, Defendant Michael J. Christiansen was a member and governor of DMH Partners North, LLC, and conducted business in Minnesota. The United States brings this action against Michael J. Christiansen in his individual capacity and as an officer, member, governor, employee, and/or agent of DMH Partners North, LLC.

12. Defendant Donald Huber is an individual residing in Florida. At all times relevant to this action, Huber was a member and governor of DMH Partners North, LLC, and conducted business in Minnesota. The United States brings this action against Huber in his individual capacity and as an officer, member, governor, employee, and/or agent of

DMH Partners North, LLC.

**CWA STATUTORY AND REGULATORY FRAMEWORK**

13. The CWA, 33 U.S.C. §§ 1311(a) and 1344(a), prohibits the discharge of pollutants into navigable waters, except in compliance with, inter alia, a permit issued by the Corps pursuant to 33 U.S.C. § 1344.

14. “Pollutant” includes dredged material excavated from navigable waters and fill material such as rock, sand, or dirt. 33 U.S.C. § 1362(6); 33 C.F.R. § 323.2(c), (e).

15. “Navigable waters” means “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

16. “Waters of the United States” includes wetlands adjacent to such waters. 33 C.F.R. § 328.3(a)(7).

17. A person seeking to discharge dredged or fill material into waters of the United States must generally obtain a permit to do so from the Corps. 33 U.S.C. § 1344(a), (d).

18. When a person violates a permit issued under 33 U.S.C. § 1344 (often referred to as a CWA Section 404 permit), the Corps may issue an order requiring compliance and/or commence a civil action in federal district court for appropriate relief, including a temporary or permanent injunction and/or assessment of a civil penalty. 33 U.S.C. § 1344(s).

**THE WETLAND**

19. The real property containing the wetland at issue is an approximately 34-acre

parcel in Sauk Rapids, Minnesota (the Site).

20. On the United States Geological Services quadrangle map, the Site is located in the NE 1/4, NW 1/4, Sec. 24, T. 36N, R. 31W, in Benton County, Minnesota.

21. Prior to the activities that are the subject of this Complaint, the wetland on the Site comprised 10.2 acres of the approximately 34-acre Site.

22. The wetland on the Site diagonally bisected the Site.

23. The wetland on the Site was comprised of sedge meadow, shallow marsh, shrub carr, and hardwood forest plant community types.

24. At the time the permit was issued and when the work was undertaken at the Site, the Defendants owned or otherwise controlled the Site and/or controlled the activities that occurred on the Site.

25. The wetland on the Site abuts an unnamed tributary that flows at least seasonally to the Mississippi River via the Elk River.

26. The Mississippi River is “currently used...used in the past, or...susceptible to use in interstate or foreign commerce” and, thus, is a navigable water of the United States as defined in 33 C.F.R. § 328.3(a)(1). The unnamed tributary is a water of the United States because it is a tributary to a water of the United States, namely the Mississippi River, under 33 C.F.R. § 328.3(a)(5).

27. The wetland on the Site has a continuous surface connection to the Mississippi River, a traditional navigable water, and, therefore, is a water of the United States.

**THE PERMIT AND ADMINISTRATIVE ORDER VIOLATIONS**

28. The Defendants are “persons” within the meaning of the CWA, 33 U.S.C. § 1362(5).

29. On November 9, 2004, Defendant DMH Partners North, LLC, through its Chief Financial Manager/Treasurer, Defendant Michael J. Christiansen, executed a mortgage on the Site in favor of Central Minnesota Federal Credit Union.

30. In 2006, Jeffrey Draxten, member and/or agent of DMH Partners North, LLC, in the course of his employment with and acting as an agent for DMH Partners North, LLC, applied for a CWA Section 404 permit to discharge dredged and fill material into the wetland on the Site to construct a retail complex.

31. The Defendants’ retail complex development project was called The Quarry Development Project at Golden Spike.

32. On August 28, 2008, the Corps issued DMH Partners, LLC a permit under CWA Section 404, 33 U.S.C. § 1344, to discharge fill material into 7.8 acres of the wetland on the Site, provided certain terms and conditions contained in the permit were met.

33. The permit included numerous special conditions that, among other things, required Defendants to create 2.48 acres of new wetland area on the Site, create 0.58 acres of upland buffer area on the Site, and restore 1.20 acres of wetland area on the Site.

34. The permit further required Defendants to purchase a total of 19.98 credits from an approved mitigation bank as off-site mitigation for the harm to the wetland on the Site.

35. A “credit” is a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site, such as a mitigation bank. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved. 33 C.F.R. § 332.2.

36. The Defendants knew that DMH had obtained the CWA Section 404 permit regarding the wetland on the Site, and were involved in the operations on the Site or oversaw those operations.

37. In June 2009, the Corps inspected the Site and found that Defendants had commenced clearing and grading the Site and had discharged fill material into approximately 7.1 acres of the wetland on the Site.

38. The Corps further found that the Defendants had abandoned the Site without completing on-site and off-site mitigation in accordance with the conditions of the permit.

39. Defendants’ permit violations include failing to complete the on-site mitigation, failing to submit annual mitigation monitoring reports, and failing to purchase the mitigation bank credits required by the permit.

40. After its June 2009 inspection, the Corps learned that the Site had been sold at a foreclosure auction in April 2009 to mortgagee Central Minnesota Federal Credit Union.

41. Defendants further violated the permit by failing to maintain the project in good condition and in conformance with the conditions of the permit, instead abandoning

the Site without obtaining a permit modification or arranging a permit transfer as the permit required.

42. The Corps repeatedly notified the Defendants of their permit violations, including by issuing notices of permit violations in September 2009 and serving a Corps Compliance Order in February 2010, and demanded that Defendants rectify them.

43. By correspondence dated February 25, 2010, Jeffrey Draxten referred the Corps to Defendant Donald Huber.

44. The Corps received no other response to its notice of permit violations or Compliance Order.

45. To date, Defendants have not complied with the permit or the Compliance Order.

#### **FAILURE TO OBSERVE BUSINESS ORGANIZATION FORMALITIES**

46. Defendants have not observed the necessary business organization formalities for DMH Partners North, LLC. DMH Partners North, LLC was organized in 2004 and administratively terminated by the Minnesota Secretary of State in 2006 for failure to make the required annual filings.

47. The 2006 administrative termination of DMH Partners North, LLC, a Minnesota company, occurred before DMH Partners, LLC applied for and obtained the permit underlying this action.

48. Defendant Huber is an officer and/or director of another DMH entity known as DMH Partners, Inc., a Florida corporation.



49. Defendant Patrick T. Christiansen is the managing member of another DMH entity known as DMH Partners North, LLC, a Florida LLC.

50. Defendants have identified the responsible party under the permit by numerous DMH names, including DMH Partners, LLC; DMH Partners, Inc.; and DMH Partners North, LLC.

51. Defendants' failure to observe basic corporate formalities, their obfuscation of the party responsible for compliance with the permit, along with facts to be discovered in this lawsuit, warrant piercing the corporate veil of Defendant DMH Partners North, LLC, a Minnesota LLC, vertically to reach its individual members, and/or horizontally to reach related DMH entities effectively functioning as one entity.

**COUNT I**  
**VIOLATION OF CWA SECTION 404 PERMIT**

52. The United States incorporates herein by reference the allegations of the preceding paragraphs.

53. The Defendants' failure to abide by the conditions of their permit as alleged above, including the failure to provide compensatory mitigation and the failure to purchase mitigation bank credits as required by the permit, constitutes a violation of the CWA, 33 U.S.C. §§ 1311(a) and 1344(s).

54. Each day the Defendants fail to abide by the permit constitutes a separate day in violation of the CWA.

55. To date, Defendants have not brought the project into compliance with the

permit or corrected any of the violations identified in this Complaint.

56. Unless enjoined by order of this Court, the Defendants will continue to violate the CWA, including in the manner described above.

57. Defendants are subject to civil penalties of \$25,000 per day for each day that they have failed to abide by the permit pursuant to the CWA, 33 U.S.C. §§ 1319(d) and 1344(s).

**COUNT II**  
**VIOLATION OF CWA COMPLIANCE ORDER**

58. The United States incorporates by reference the allegations of the preceding paragraphs.

59. In February 2010, the Corps served Defendants DMH Partners North, LLC, Patrick T. Christiansen, and Donald Huber with a Compliance Order requiring them, inter alia, to submit a plan regarding completion of the on-site compensatory mitigation required in the permit within 30 days of the date of the Compliance Order, and to purchase the necessary mitigation bank credits under the permit.

60. Defendants DMH Partners North, LLC, Patrick T. Christiansen, and Donald Huber have failed to comply with the Compliance Order.

61. To this day, Defendants DMH Partners North, LLC, Patrick T. Christiansen, and Donald Huber have not complied with the Compliance Order or corrected the violations identified in the Compliance Order.

62. Defendants DMH Partners North, LLC, Patrick T. Christiansen, and Donald

Huber are subject to civil penalties of \$25,000 per day for each day that they have failed to comply with the Compliance Order pursuant to the CWA, 33 U.S.C. §§ 1344(s).

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that the Court order the following relief:

1. That the Defendants be enjoined to bring the project into compliance with the permit, or alternatively, to undertake off-site mitigation to compensate for the environmental impacts of the project as constructed;

2. That the Defendants be assessed civil penalties pursuant to 33 U.S.C. §§ 1319(d) and 1344(s) for each day they violated the CWA,

3. That the United States be awarded costs, disbursements, expenses and attorney's fees in this action; and

4. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Dated: December 31, 2012

Respectfully submitted,

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United States Attorney

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